

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

ARCHER AND WHITE SALES, INC.,

Plaintiff,

v.

**HENRY SCHEIN, INC., DANAHER
CORPORATION, INSTRUMENTARIUM
DENTAL INC., DENTAL EQUIPMENT
LLC, KAVO DENTAL TECHNOLOGIES,
LLC AND DENTAL IMAGING
TECHNOLOGIES CORPORATION,**

Defendants.

CIVIL ACTION NO. 2:12-cv-00572

**DEFENDANTS' JOINT RESPONSE TO PLAINTIFF'S NOTICE PURSUANT TO
COURT'S STANDING ORDER REGARDING READINESS FOR STATUS
CONFERENCE**

Defendants Danaher Corporation, Instrumentarium Dental Inc., Dental Equipment LLC, Kavo Dental Technologies, LLC and Dental Imaging Technologies Corporation (together, the "Manufacturer Defendants") and Defendant Henry Schein, Inc. ("Schein") hereby respond to Plaintiff's Notice Pursuant to Court's Standing Order Regarding Readiness for Status Conference (Docket No. 26). Defendants respectfully submit that it is not appropriate to calendar a scheduling conference in this case at this time in light of the pending Motions To Compel Arbitration and the Defendants' Joint Motion for Extension of Stay of Deadlines (Docket Nos. 10, 14, 29).

Plaintiff asserts that because "all Defendants have appeared and filed Motions to Compel Arbitration," this case will be ready for a scheduling conference once the current stay of all

deadlines expires on October 31, 2012. This assertion is incorrect, and the court should not calendar a scheduling conference at this time.

First, this case is not ready for scheduling conference pursuant to the terms of the Court's Standing Order Regarding Readiness for Status Conference. According to the Standing Order, "The Court ORDERS the Plaintiff in each civil case file a notice that the case is ready for scheduling conference when all of the Defendants have either answered or filed a motion to transfer or dismiss." Here, no Defendant has answered or filed a motion to transfer or dismiss. To the contrary, Defendants have filed separate Motions to Compel Arbitration and expressly reserved their rights to file motions to dismiss. *See* Manufacturer Defendants' Motion to Compel Arbitration and Stay All Proceedings (Docket No. 10) at 1 n.1 (reserving rights to file a motion to dismiss in the event the Court finds any part of this action suitable for resolution by the Court); Defendant Schein's Motion to Compel Arbitration and Stay All Proceedings (Docket No. 14) at 10 n.10 (same). The requirements of the Standing Order have not been met, and it is inappropriate at this time to calendar a scheduling conference.

Second, Defendants have moved for an extension of the current stay of all deadlines for an additional thirty (30) days to November 30, 2012. *See* Defendants' Joint Motion for Extension of Stay of Deadlines (Docket No. 29). For all of the reasons discussed in the Joint Motion for Extension of Stay, it would be prejudicial to Defendants to calendar a scheduling conference at this time and subject the Defendants to the burden and expense of litigating in this forum. All deadlines should continue to be stayed pending the Court's determination of the Motions to Compel Arbitration.

Dated: October 30, 2012

Respectfully submitted,

/s/ Paul F. Schuster

/s/ Layne E. Kruse

Paul F. Schuster (Bar No. 00784931)
Michael V. Powell (Bar No. 16204400)
LOCKE LORD LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
Tel: (214) 740-8000
Fax: (214) 740-8800
pschuster@lockelord.com

Layne E. Kruse (Bar No. 11742550)
FULBRIGHT AND JAWORSKI LLP
Fulbright Tower
1301 McKinney
Suite 5100
Houston, TX 77010-3095
Tel: (713) 651-5151
Fax: (713) 651-5246
lkruse@fulbright.com

Helene D. Jaffe (pro hac vice)
Alan R. Kusinitz (pro hac vice)
PROSKAUER ROSE LLP
Eleven Times Square
New York, NY 10036-8299
Tel: (212) 969-3000
Fax: (212) 969-2900

Steven R. Kuney
Jonathan B. Pitt (pro hac vice)
James H. Weingarten (pro hac vice)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street NW
Washington, DC 20005
Tel: (202) 434-5000
Fax: (202) 434-5029

Counsel for Defendant Henry Schein, Inc.

*Counsel for Defendants Danaher Corporation,
Instrumentarium Dental Inc., Dental
Equipment LLC, Kavo Dental Technologies,
LLC and Dental Imaging Technologies
Corporation*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing DEFENDANTS' JOINT RESPONSE TO PLAINTIFF'S NOTICE PURSUANT TO COURT'S STANDING ORDER REGARDING READINESS FOR STATUS CONFERENCE has been served upon all counsel of record by using the Court's electronic filing system ("EFS") on October 30, 2012.

/s/ James H. Weingarten

James H. Weingarten